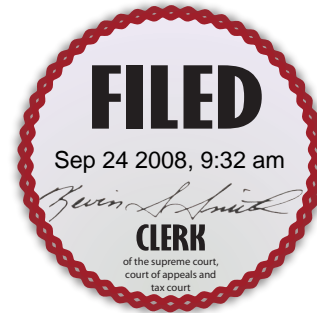


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

STEVEN CHAD THOMAS,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 29A04-0803-CR-146

APPEAL FROM THE HAMILTON SUPERIOR COURT
The Honorable Daniel J. Pfleging, Judge
Cause No. 29D02-0405-FB-65

September 24, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Defendant Steven Chad Thomas appeals his conviction for Dealing in a Schedule III Controlled Substance, as a Class B felony.¹ We affirm.

Issues

Thomas raises three issues on appeal, which we consolidate and restate as:

- I. Whether the trial court abused its discretion in admitting the evidence obtained pursuant to the search of his truck after a traffic stop; and
- II. Whether the trial court abused its discretion in admitting evidence found in his home.

Facts and Procedural History

On May 27, 2004, “Heather,” a confidential informant for the Hamilton County Drug Task Force, was assisted by Detective Timothy Firks to place a 3-way phone call to Thomas. This enabled Detective Firks to record the conversation. During the call, “Heather” asked Thomas if she could buy twenty Lortabs from him. Thomas responded affirmatively. That evening, “Heather” called Thomas to arrange a meeting place to purchase the Lortabs. They arranged to meet at the BP/McDonald’s on State Route 37 at 131st Street. Thomas stated that he would be driving a red S10 truck with “twenties” on it. State’s Exhibit 2.

Waiting for Thomas’s arrival, detectives from the Hamilton Drug Task Force staked out the BP/McDonald’s. After Thomas arrived, the location of the deal was switched to a Village Pantry near Greenfield. As Thomas drove his truck toward the new location, the detectives had Fishers Police Officer J.D. Floyd initiate a traffic stop. As he initiated the

¹ Ind. Code § 35-48-4-2(a)(2).

stop, Officer Floyd observed that Thomas's truck did not have the license plate illuminated² and the tint on the windows was too dark.³ Minutes later, a canine unit arrived and walked around Thomas's truck. The canine indicated at the driver's door, prompting the canine officer to notify the Drug Task Force detectives of the positive indication.

Thomas was arrested, and his truck was transported to the Fishers Police Department and searched. Pills were found on Thomas's person and 220 pills, including eighteen generic Lortab pills, were recovered from the truck. Lortab is a schedule III controlled substance. After Thomas was Mirandized, provided a statement confirming his conversations with "Heather," and signed a consent form, detectives searched Thomas's home and recovered other prescription drugs, empty pill bottles, and a pill crusher.

The State charged Thomas with Dealing in a Schedule III Controlled Substance, as a Class B felony. On May 6, 2005, Thomas filed a Motion to Suppress the evidence recovered during the search of his truck. At the hearing on the motion, Thomas argued that the traffic stop was not supported by reasonable suspicion and the search of the truck was improper because the canine was not trained to detect the drugs found. After taking the evidence and argument under advisement, the trial court denied the motion. Thomas then sought an interlocutory appeal on this ruling. His petition was denied by this Court.

On September 25, 2007, the State filed a Motion to Introduce Evidence of Other Crimes, Wrongs or Acts under Indiana Evidence Rule 404(b). Prior to trial, the trial court granted the State's motion in part, ruling that evidence of all of the drugs recovered was

² Ind. Code § 9-19-6-4(e).

admissible.

A jury found Thomas guilty as charged. On December 6, 2007, the trial court sentenced Thomas to ten years imprisonment and suspended seven years. Thomas now appeals.

Discussion and Decision

Standard of Review

All of the issues raised by Thomas challenge the trial court's ruling on the admissibility of certain evidence. A trial court's decision to admit or exclude evidence is reviewed for an abuse of discretion. Gauvin v. State, 878 N.E.2d 515, 520 (Ind. Ct. App. 2007), trans. denied. An abuse of discretion occurs if the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court. Id. This Court will only reverse for an error in a ruling on admissibility if the error is inconsistent with substantial justice. Ind. Trial Rule 61.

I. Evidence From Traffic Stop and Truck Search⁴

First, Thomas argues that the pills found in his truck were not admissible as evidence because the traffic stop violated his federal and state constitutional rights against unreasonable searches and seizures. Specifically, he asserts that the police did not have reasonable suspicion to initiate the traffic stop.

³ Ind. Code § 9-19-19-4.

⁴ Thomas also claims that the evidence found in his truck was not admissible because he did not provide consent to the police to conduct the search. However, he does not cite where in the record he raised this argument to the trial court nor does our review of the record reveal this assertion. Therefore, he has waived this argument for appellate review. See Crafton v. State, 821 N.E.2d 907, 912 (Ind. Ct. App. 2005) ("As a general rule, a party may not present an argument or issue to an appellate court unless the party raised the same argument or issue before the trial court.").

An investigatory stop of a citizen by a police officer does not violate the Fourth Amendment rights of that individual where the officer has a reasonable articulable suspicion of criminal activity. State v. Ritter, 801 N.E.2d 689, 691 (Ind. Ct. App. 2004), trans. denied. Such reasonable suspicion is determined on a case-by-case basis, in light of the totality of the circumstances. Id. Similarly, under Article I, Section 11 of the Indiana Constitution, a police stop and brief detention of a motorist is reasonable if the officer reasonably suspects that the motorist is engaged in, or is about to engage in, illegal activity. Id. Thus, the question to be decided is whether Officer Floyd had a reasonable suspicion to stop Thomas's vehicle. Although the standard of review of a trial court's decision to admit evidence is whether there was an abuse of discretion, the determination of reasonable suspicion is reviewed *de novo*. Id.

Thomas essentially challenges the credibility of Officer Floyd rather than the determination of reasonable suspicion. He notes that a citation or warning for the equipment violations was not issued and Officer Floyd's testimony at the motion to suppress hearing conflicts with his trial testimony as to the equipment violation he had observed. "[A] police officer may briefly detain a person whom the officer believes has committed an infraction or an ordinance violation." Peete v. State, 678 N.E.2d 415, 419 (Ind. Ct. App. 1997), trans. denied. When questioned about his answer in the motion to suppress hearing as compared to that at trial, Officer Floyd testified that had observed both improper window tinting and the failure to properly illuminate the license plate.

In reviewing a trial court's decision of whether a traffic stop was valid, whether as a

motion to suppress or a challenge of the admissibility of evidence, we do not reweigh the evidence or judge the credibility of witnesses. See Ross v. State, 844 N.E.2d 537, 541 (Ind. Ct. App. 2006). Implicit in the trial court's ruling on the admissibility of evidence from the traffic stop was the trial court's determination that Officer Floyd's testimony as to the observance of the two equipment violations was credible. Therefore, these equipment violations provided a valid basis, under both the federal and state constitutions, for Officer Floyd to stop Thomas. The trial court did not abuse its discretion in admitting the evidence that was discovered in the search of Thomas's truck.

II. Evidence from Home Search

Second, Thomas argues that his written consent to search his home was not voluntary and that the evidence supported other crimes or wrongs not charged, making the evidence recovered inadmissible. We disagree.

A. Voluntary Consent

When the State seeks to rely upon consent to justify a warrantless search, it has the burden of proving that the consent was, in fact, freely and voluntarily given. The voluntariness of a consent to search is a question of fact to be determined from the totality of the circumstances. A consent to search is valid except where it is procured by fraud, duress, fear, intimidation, or where it is merely a submission to the supremacy of the law. To constitute a valid waiver of Fourth Amendment rights, a consent must be the intelligent relinquishment of a known right or privilege.

Callahan v. State, 719 N.E.2d 430, 435 (Ind. Ct. App. 1999) (citations omitted).

A nonexclusive list of factors to consider in determining the voluntariness of a consent under the totality of the circumstances is: (1) whether the defendant was advised of his *Miranda* rights prior to the request to search; (2) the defendant's degree of education and

intelligence; (3) whether the defendant was advised of his right not to consent; (4) whether the detainee has previous encounters with law enforcement; (5) whether the officer made any express or implied claims of authority to search without consent; (6) whether the officer was engaged in any illegal action prior to the request; (7) whether the defendant was cooperative previously; and (8) whether the officer was deceptive as to his true identity or the purpose of the search. Meyers v. State, 790 N.E.2d 169, 172 (Ind. Ct. App. 2003).

As to the consent form Thomas signed after his interview at the Fishers police station, Thomas concedes that the second, third, and seventh factors support that the consent was voluntary. There is no evidence that the officers who interviewed Thomas had engaged in any illegal activity prior to the request, expressed or implied claims of authority to search without consent, or that they were deceptive as to their identity or purpose of the search. Furthermore, Thomas was advised of his *Miranda* rights and signed a written form explaining his rights prior to signing the consent to search form. Based on the totality of the circumstances, Thomas's consent to the search of his home was voluntary and was not a basis upon which the recovered evidence would be inadmissible.

B. Evidence of Other Crimes or Wrongs

Thomas also asserts that the evidence of pills other than Lortabs that were collected from his house and truck were inadmissible because such evidence violates Evidence Rule 404(b), prohibiting evidence of other crimes or wrongs to prove the character of the defendant. Indiana Evidence Rule 404(b) provides: "Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity

therewith. It may, however, be admissible for other purposes, such as proof of motive, intent, preparation, plan, knowledge, identity, or absence of mistake or accident[.]” The rule does not bar evidence of uncharged acts that are “intrinsic” to the charged offense. Wages v. State, 863 N.E.2d 408, 411 (Ind. Ct. App. 2007), trans. denied. “Other acts are ‘intrinsic’ if they occur at the same time and under the same circumstances as the crimes charged.” Holden v. State, 815 N.E.2d 1049, 1054 (Ind. Ct. App. 2004), trans. denied. “Evidence of happenings near in time and place that complete the story of the crime is admissible even if it tends to establish the commission of other crimes not included among those being prosecuted.” Bocko v. State, 769 N.E.2d 658, 664-65 (Ind. Ct. App. 2002), trans. denied.

The exhibits and testimony of the other drugs in Thomas’s truck and home at the time of his arrest are intrinsic to the charged offense. The drugs and prescription bottles, bearing the names of individuals other than Thomas and dispensed by Thomas’s employer CVS, complete the story of Thomas’s crime. This evidence is probative of Thomas’s plan and intent of illegally acquiring prescription medications and selling them for profit. The trial court did not abuse its discretion in admitting this evidence.

Affirmed.

RILEY, J., and BRADFORD, J., concur.